

## **REMARKS**

[0001] Applicant respectfully requests reconsideration and allowance of all of the claims of the application. Claims 1, 3-8, 10-15 and 24-26 are presently pending. Claims 1 and 8 have been amended herein. No claims have been withdrawn or cancelled herein. New claims 24-26 have been added herein.

### **Formal Request for an Interview**

[0002] If the Examiner's reply to this communication is anything other than allowance of all pending claims, then I formally request an interview with the Examiner. I encourage the Examiner to call me—the undersigned representative for the Applicant—so that we can talk about this matter so as to resolve any outstanding issues quickly and efficiently over the phone.

[0003] Please contact me to schedule a date and time for a telephone interview that is most convenient for both of us. While email works great for me, I welcome your call as well. My contact information may be found on the last page of this response.

### **Claim Amendments and Additions**

[0004] Without conceding the propriety of the rejections herein, Applicant amends claims 1 and 8 and adds new claims 24-26 herein. This new claim is fully supported by the Application and therefore does not constitute new matter. Please see at least Figures 4-6 and their corresponding discussions in the specification. Applicant adds this new claim to highlight claimed features in order to expedite prosecution and more quickly identify allowable subject matter.

Such claim features should not be construed as further limiting the claimed invention in response to the cited references.

[0005] New claim 24 is allowable over the cited references at least because it recites an extensible loader.

## **Substantive Matters**

### **Claim Rejections under § 101**

[0006] Claims 1, 3-8 and 10-15 are rejected under 35 U.S.C. § 101. Applicant respectfully traverses this rejection. Furthermore, in light of the amendments presented herein, Applicant respectfully submits that these claims comply with the patentability requirements of §101 and that the §101 rejections should be withdrawn. Applicant further asserts that these claims are allowable. Accordingly, Applicant asks the Examiner to withdraw these rejections.

[0007] If the Examiner maintains the rejection of these claims, then Applicant requests additional guidance as to what is necessary to overcome the rejection.

### **Claim Rejections under § 103**

[0008] Claims 1, 3-8 and 10-15 are rejected under 35 U.S.C. § 103. In light of the discussion herein, Applicant submits that these rejections are moot due to the invalidity of a cited reference. Accordingly, Applicant asks the Examiner to withdraw these rejections.

**[0009]** The Examiner's rejections are based upon the following references in combination:

- **Bodrov:** *Bodrov, et al.*, US Patent No. 6,802,006 (issued October 5, 2004); and
- **Lecture:** *Lecture*, <http://www.ssw.uni-linz.ac.at/Teaching/Lectures/Sem/2001/Literatur/FileFormatSpec.doc>

### **Overview of the Application**

**[0010]** The Application describes operating systems and loaders of executable images. Furthermore, the Application facilitates the adoption and recognition by an operating system of an otherwise unsupported executable-image format by increasing the ease with which an executable-image loader may be modified.

### **Cited References**

**[0011]** The Examiner cites Bodrov as the primary reference in the obviousness-based rejections. The Examiner cites Lecture as the secondary reference in the obviousness-based rejections.

### **Invalidity of the Web Document Reference "Lecture"**

**[0012]** Objectively, the reference "Lecture" cited as a web document is invalid because the evidence provides no verifiable date of publication. Applicant assumes that the Examiner is relying upon the indication within the document,

that "Lecture" was last modified on October 10<sup>th</sup>, 2000. This appears to be the only date referenced within the document. Unlike printed publications from which the printed publication date may be verified via many sources, each copy bearing the same date, the date that "Lecture" was purportedly published (October 10<sup>th</sup>, 2000) is not independently verifiable.

**[0013]** The Examiner has not provided a copy of the "Lecture" reference or any other evidence sufficient to establish an effective publishing date of the reference.

**[0014]** Furthermore, upon Applicant's attempt to determine when the cited reference was accessible via the Internet, Applicant obtained, from the "Internet Archive" (The Wayback Machine, <http://www.archive.org/index.php>) November 26, 2003 as the earliest recorded date. See Exhibit A, filed herewith. November 26, 2003 falls after the effective filing date of the Application.

**[0015]** Moreover, the "Internet Archive" is not a valid means to determine the publication date of a reference. Instead the "Internet Archive" is merely used as a means to speculate on an effective publishing date of a reference. Ultimately, from the information provided in the document "Lecture" and the URL that opens the document via the Internet, there is no evidence supporting determination of a verifiable publication date. Furthermore, no author or publication information is associated with the document. A large part of the document appears to be directed toward Microsoft Technology. Microsoft also has the assigned rights to the instant Application. Thus, it would appear that the

document was submitted to the specified URL for lecturing purposes after the instant Application was filed with the USPTO.

**[0016]** Therefore, based on the record available, Applicant respectfully asserts that "Lecture" is an invalid reference and cannot properly be relied upon in the Office's rejection. Accordingly, Applicant respectfully requests that the outstanding rejection be withdrawn, and the claims passed to issuance. If the claims, as previously presented, are not in condition for allowance, Applicant requests that the next action be non-final.

## **Conclusion**

[0017] All pending claims are in condition for allowance. Applicant respectfully requests reconsideration and prompt issuance of the application. If any issues remain that prevent issuance of this application, the **Examiner is urged to contact me before issuing a subsequent Action.** Please call or email me at your convenience.

Respectfully Submitted,

Lee & Hayes, PLLC  
Representatives for Applicant

/Jacob Rohwer 61,229/

Dated: 7/31/2008

Jacob P. Rohwer (jacob@leehayes.com)

Registration No. 61,229

Bea Koempel-Thomas (bea@leehayes.com; x259)

Registration No. 58,213

Customer No. **22801**

Telephone: (509) 868-8323

Facsimile: (509) 323-8979

www.leehayes.com

## Exhibit A

Serial No. 10/090,650

Atty Docket No. MS1-0779US

Enter Web Address: 

All

[Adv. Search](#)Searched for <http://www.ssw.uni-linz.ac.at/Teaching/Lectures/Sem/2001/Literatur/FileFormatSpec.doc>**2**  
Results

\* denotes when site was updated.

Material typically becomes available here 6 months after collection. [See FAQ.](#)**Search Results for Jan 01, 1996 - Feb 02, 2008**

1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
0	0	0	0	0	0	0	1 pages	1 pages	0	0	0	0
pages	pages	pages	pages	pages	pages	pages			pages	pages	pages	pages
Nov 26, 2003 * Aug 23, 2004												

[Home](#) | [Help](#)[Internet Archive](#) | [Terms of Use](#) | [Privacy Policy](#)